

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SCOTT FRANK FIALHO,

Plaintiff,

v.

AULD, et al.,

Defendants.

No. 2:21-cv-1698 KJM DB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding with a civil rights action under 42 U.S.C. § 1983. Plaintiff alleges Eighth Amendment violations for defendants' conduct regarding the COVID-19 pandemic. In an order filed October 27, 2021, this court found plaintiff failed to state any cognizable claims for relief. Plaintiff was given the opportunity to file a first amended complaint within sixty days. Plaintiff was warned that if he failed to comply with the October 27 order, this court might recommend this action be dismissed.

When sixty days had passed and plaintiff had not filed a first amended complaint, this court issued an order giving plaintiff an additional thirty days to file. (March 30, 2022 Order (ECF No. 16).) Plaintiff was warned that if he failed to file a timely first amended complaint, this court would recommend this action be dismissed without prejudice for plaintiff's failure to prosecute and failure to comply with court orders. See E.D. Cal. R. 110; Fed. R. Civ. P. 41.


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1 Plaintiff has now had well over six months to file a first amended complaint and has not
2 done so. Nor has plaintiff responded in any way to the court's March 30 order.

3 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without
4 prejudice for plaintiff's failure to prosecute and failure to comply with court orders. See E.D.
5 Cal. R. 110; Fed. R. Civ. P. 41.

6 These findings and recommendations will be submitted to the United States District Judge
7 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty days after
8 being served with these findings and recommendations, plaintiff may file written objections with
9 the court. The document should be captioned "Objections to Magistrate Judge's Findings and
10 Recommendations." Plaintiff is advised that failure to file objections within the specified time
11 may result in waiver of the right to appeal the district court's order. Martinez v. Ylst, 951 F.2d
12 1153 (9th Cir. 1991).

13 Dated: May 19, 2022

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16 DEBORAH BARNES
17 UNITED STATES MAGISTRATE JUDGE
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